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CONSTITUTION

OF THE

KINGDOM OF PRUSSIA

TRANSLATED AND SUPPLIED

WITH

AN INTRODUCTION AND NOTES

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NOTE.

This Constitution, by means of the numbers at the bottom of the pages, is paged continuously with the Constitution of the United States of Mexico, which was the first paper in Volume II of the ANNALS, and was issued in a separate edition as No. 27 of the Publications of the Academy, the Constitution of the Republic of Colombia, which was sent as a Supplement to the January, 1893, ANNALS, and was also issued as No. 79 of the Publications of the Academy, and the Constitutional and Organic Laws of France which were sent as a Supplement to the March, 1893, ANNALS, and were also issued as No. 86 of the Publications of the Academy.

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A BRIEF SKETCH OF THE ORIGIN AND NATURE OF THE PRUSSIAN CONSTITUTION.

I.

The development of an unlimited, centralized monarchy was seemingly inevitable in Prussia, since the growth of this state is almost solely attributable to a line of remarkably able monarchs who, since the House of Hohenzollern was granted the then comparatively insignificant Mark Brandenburg, early in the fifteenth century, have, by their personal wit and fortune, first acquired and then consolidated an ever widening territory. When the Great Elector succeeded at the close of the Thirty Years' War in bringing his disordered lands again under the royal control, we find the Prussian territories consisting of three groups of States: Brandenburg and the adjacent lands; Prussia, at that time far to the east of the other possessions of the elector; and finally the Rhine lands of Cleves, Mark and Ravensberg. "All these numerous principalities had their own separate constitutions which, in the main, granted the ruler only the most restricted powers. No common political institutions existed. The Brandenburger was a foreigner in Prussia, while in Brandenburg, on the other hand, the Rhinelander from Cleves or the Westphalian from Minden was denied the title of citizen. The bond of union for all these lands and peoples was the ruler. He alone could furnish a nucleus around which the future state might crystallize. Hence the political structure had inevitably to be reared upon a monarchical foundation. The consolidation of the state necessarily involved a

struggle with the particularism of the estates of the various realms, in so far as their overgrown prerogatives came into conflict with the essential unity of the state."[1] The concentration of all the power of the state in the hands of the ruler was, however, only brought about by the most disastrous concessions to the nobles. In return for the surrender of their political rights and influence, their privileges of rank were increased, and the peasant was left completely at their mercy. The lamentable social conditions which were the result, prevailed down to the disaster of Jena (1806), when utter defeat and threatened annihilation roused even Frederick William III. to agree to a project of reform. With Stein's Edict of Emancipation (1807) and the later reforms carried out by Hardenberg, the worst abuses of the social and industrial organization were abolished, and a prospect of political regeneration appeared in the promises of the king, who announced, as early as 1810, his intention "to grant the nation a suitably organized representation both provincial and national," of whose counsel he would gladly take advantage. In a famous decree issued five years later (May 22, 1815), the king went much farther. A commission was actually to be assembled at Berlin consisting of state officials and inhabitants of the provinces, who were to draw up a written constitution providing not only for a system of provincial assemblies (upon which the king laid great stress), but for a national representation of the people as well. This decree was never executed, however, nor were the king's promises of a constitution (repeated again in 1820) ever fulfilled, much to the disappointment of all liberal-minded men. Not only was the king, together

[1] Schulze, "*Das Preussische Staatsrecht*," Zweite Aufl. I. 46. An admirably clear account of the development of the Prussian Kingdom and of the origin of the constitution is to be found in this work, pp. 24–129.

with a large and influential reactionary party who hated Stein and all his inventions, really opposed to a change, but the results of the Congress of Vienna, the influence of Metternich and the exaggerated fear of new revolutions all worked against constitutional progress.

When finally in 1823, the king undertook the organization of provincial assemblies, he carried out the plan in a half-hearted manner which illustrates the views entertained by the government at that time in regard to the control of the people. The tendencies of the times were wholly neglected, the aim being to revive and perpetuate mediæval institutions which had long ago proved their inadequacy. The plan was a strange hybrid of Romanticism and of the modern bureaucratic ideals of an absolute monarchy. Instead of encouraging the feeling of nationality among his subjects the king did everything to foster a provincial narrowness quite natural among the somewhat varied groups of people which the Prussian state comprises. Moreover, the people were divided into social classes, nobles (*Herren*), knights, burgesses and peasants, and the possession of landed property alone entitled a citizen to representation in the assembly of his province. The modern conception of citizenship as well as that of nationality was not recognized, but the mediæval system of separate classes of society or estates (*Stände*) was sanctioned, each of which was supposed to have its own peculiar interests, and voted separately in the assemblies. A more helpless and insignificant organization can hardly be conceived. There was no security for a periodical convocation of the estates. No report was to be made to them of the purposes to which the state funds were applied. They could not even exercise the right of petition freely. Finally their main function, that of expressing an opinion

upon proposed laws, was much less important than would at first sight appear, for from the opinions offered by eight uncorrelated assemblies, the government would have little difficulty in selecting those expressions which accorded with the views of the ministers.

II.

THE ORIGIN OF THE PRUSSIAN CONSTITUTION.

When in 1840, Frederick William III. died, and his son, Frederick William IV. ascended the throne, great hopes were entertained that Prussia would soon be numbered among the already numerous constitutional states of Germany. The new king, however, regarded the development of the institutions just described as the only legitimate mode of progress. By a system of committees appointed by the individual provincial assemblies, and which were to come together and confer upon points in regard to which the several assemblies were at variance, the king flattered himself that "an element of unity" could be given to the whole Prussian people without a dangerous approach to revolution.[1] A few years later another cautious advance was made in the establishment (February 3, 1847), of a so-called United Diet (*Vereinigter Landtag*). This consisted of *all* the members of the eight provincial assemblies, and was composed of two houses—a house of lords and a second chamber comprising the three estates of the knights, burgesses and peasants. It is unnecessary to describe this institution in detail, for no sooner had the United Diet met at Berlin in April, 1847, than it became apparent that the concessions of the king were looked upon by the people as in no respect a fulfillment of the earlier

[1] These committees met but twice, October to November, 1842, and in January, 1848.

promises to give Prussia a modern constitution. The assembly, soon after it was opened, sent an address to the king setting forth this view. The king replied, that while he regarded the system he had just introduced as unimpeachable in principle, it need not be looked upon as complete, but rather as susceptible of development.

The lower house especially was dissatisfied with the attitude of the king. They demanded that the United Diet be assembled periodically, and consulted on all proposed legislation affecting the rights of person or property, as well as in the imposition of taxes. They asked farther, that only with its consent should new loans be contracted by the state, or any alteration of the constitution take place. These and a number of equally moderate demands were refused by the king. In spite of this seemingly fruitless session of the new assembly, the event was an important one. For the first time representatives of the whole Prussian people had met together as a national whole and publicly discussed the organization of the state and demanded an abandonment of the mediæval ideas cherished by their ruler. Had the king granted the moderate reforms which the people had at heart, the difficult transition from an absolute to a constitutional monarchy might easily have been made. Before a year had elapsed the February revolution in Paris and the consequent excitement in Germany rendered the king's position no longer tenable.

In March, 1848, the king consented to meet the demands of the nation, and issued an election law providing for the choice of deputies to a constitutional convention. In the terms of this decree we find a great advance is made, for the modern idea of national representation takes the place of the mediæval conception of

class representation. The feudal estates of the realm receive no farther recognition. Every male citizen over twenty-five years of age is given the right to participate in the choice of electors, who in turn are to choose the deputies to the Constitutional Assembly. When the convention met May 22, 1848, the king laid before them a sketch of the new constitution. In this he leaves his former position entirely, and declares that "the future representation of the people shall in any case have the right to approve or reject all laws, grant all taxes and ratify the provisions of the budget." The convention appointed a committee to consider this draft, suggest emendations and receive propositions relating to the constitution. The committee, after about six weeks of deliberation, submitted a new draft July 26, which was first considered separately by the eight divisions into which the convention was divided according to provinces, and then by the body as a whole. Continued disturbances in Berlin, where the convention was sitting, produced a disagreement between the assembly and the government on those provisions which related to the civic guard and the police force of the capital. When the discussion in the committee of the whole began on October 12, the left wing of the assembly showed that it was really in power. The expression, for example, "by the grace of God," at the beginning of the constitution was stricken out, and resolutions passed looking toward a complete abolition of the nobility. The king was, moreover, requested to send aid to the inhabitants of Vienna, at that time besieged by Imperial troops. The mob in the streets of Berlin having threatened the members of the right with violence, the king ordered the transfer of the assembly to the neighboring city of Brandenburg. The radical members protested and were

scattered by the military force, and Berlin declared in a state of siege. The quorum, which had at first assembled at Brandenburg, rapidly decreased, and on December 5 the king dissolved the constitutional convention, and promulgated the so-called "*octroyed*"[1] constitution of December 5, 1848. This action on the part of the king was justified expressly on the ground that the contemplated agreement upon the form of government had, owing to circumstances, proven to be impracticable. It was farther maintained that the constitution as granted was drawn up with the greatest possible regard for the wishes expressed by the representatives of the people during their deliberations.

It was provided in the constitution that immediately after the regular assembling of the chambers, the text of the instrument should be submitted to a revision, observing the usual forms of legislation. On February 26, 1849, the new chambers met and after formally recognizing the constitution drawn up by the king as the law of the land, proceeded to subject it to the contemplated revision. The interesting crisis which the German Confederation had reached at this period could not fail to exercise an important influence upon Prussia. The lower house of the new parliament showed itself recalcitrant upon certain points relating to the proposed Federal constitution, and was dissolved by the king. This event had an important result. The election law, issued at the same time as the constitution, which granted the right of suffrage equally to all adult males, was materially modified upon this occasion and the peculiar *three class* system of choosing electors introduced, which exists to-day.[2] This innovation was

[1] From the French *octroyer*, to grant, used in the case of the Charter granted by Louis XVIII. in 1814.

[2] See Art. 71 of the Constitution.

accepted by the chambers when they were somewhat tardily convened by the king in August. They then proceeded once more to the revision of the constitution, article by article. By the middle of December a draft was agreed upon and submitted to the king. The latter suggested a series of alterations for the improvement of the constitution, which were after some consideration accepted in the main by both chambers. On January 31, 1850, a royal message declared the proposed revision of the constitution to be complete and the document in its modified form was promulgated in the official organ as "the fundamental law of the land."[1]

The marked contrast which exists between the origin of the Prussian constitution and that of our own will strike every reader. In considering the document before us it is not difficult to distinguish two divergent lines of thought. There exists an obvious compromise in this repeatedly revised text between the claims of modern popular government and of the former absolutism, the adherents of which took new courage during the reaction which coincided with the final revision. The theories of the extreme advocates of both of these opposed conceptions of the state were equally impracticable. England's system of cabinet government was as little applicable to Prussia as Frederick William's favorite mediæval estates. A compromise between the two was inevitable. The past could not but exercise a determining influence upon the result, nor could the recent democratic tendencies, during the two years of deliberations, fail to modify the outcome. Once at least since the granting of the constitution, the king has felt himself justified in violating its provisions in order to carry out a plan which

[1] The various changes which took place in the successive drafts of the constitution of 1850 are to be found in great completeness in L. v. Rönne's "*Die Verfassungs Urkunde für den Preussischen Staat*," Dritte Aufl., Berlin, 1859.

he rightly believed to be of the utmost import, not only to Prussia, but to all Germany. In general, however, the king retains a sufficiency of power to enable him to promote his ends without a formal breach of the constitution. He is still the recognized and efficient head of the state, in whom all political powers are vested. While in the exercise of certain definite government functions, he must proceed with the co-operation of the representatives of the people, he continues to possess all residual powers and nothing can legally be done by the government without his consent.

III.

GENERAL CONCEPTIONS UNDERLYING THE PRUSSIAN CONSTITUTION.

The understanding of the Prussian constitution depends chiefly upon a firm grasp of the truth that Prussia was an absolute monarchy until 1850, and that the present constitution was in its essential features drawn up by the king himself as a limitation upon his own hitherto absolute power. The constitution of Prussia is thus the concession to the people of a right to participate with the formerly absolute ruler in the conduct of the government. Obviously any general analogy to our own constitution, either as regards origin or aim, is entirely wanting, and only by divesting our minds of preconceptions based upon our own institutions and by keeping constantly in view the fundamental characteristics of the Prussian constitution, can we hope to gain anything from a study of the document itself.

Up to the time the constitution went into force the officially announced will of the king was law in Prussia. He was the sole legislator, as well as the supreme and

uncontrolled head of the administration. He made the laws and executed them. It would therefore be but natural to infer that in conceding to the nation in 1849 the right to participate in legislation, the king would have acted with circumspection and with the idea of maintaining to a great extent his former control of affairs. The personal inclination of the king would be re-enforced by the tendency of long established institutions to perpetuate themselves in spirit if not in form. We shall, therefore, not be surprised to find the former governmental system constantly reflected in the provisions of the present constitution, and serving as an explanation of many of its features.

The conception of kingship is obviously of the first importance in Prussian constitutional law. "As in constitutional monarchies in general," v. Rönne observes,[1] "so in the Prussian State, the right of the supreme direction of the state belongs exclusively to the king as its head, and no act of government may be performed without his assent or against his will. All the prerogatives of the state are united in his person and his will is supreme, the officials being only organs through which he acts. The constitution, it is true, does not expressly set forth these principles, but they have been already legally formulated in the Prussian law, and are moreover a necessary consequence resulting from the very nature of monarchy."[2]

The powers of the king enumerated in the constitution (Title III) are only a partial list of those remaining to him after granting the constitution. The king does

[1] "*Preussisches Staatsrecht*," Vierte Aufl., I, 150.

[2] The clause here referred to, in the ante-constitutional law of Prussia (*Allgemeines Landrecht für die Prussischen Staaten*, S. 1, Thl. 2, Tit. 13), reads: "All rights and duties of the state toward its citizens and those under its protection are concentrated in the head of the state."

not possess, according to German law, simply an arbitrary aggregate of sovereign rights conceded him by the constitution, but "the whole and undivided power of the state in all its plenitude. It would, therefore, be contrary to the nature of the monarchical constitutional law of Germany to enumerate all individual powers of the king, or to speak of royal prerogative . . . his sovereign right embraces, on the contrary, all branches of the government. Everything which is decided or carried out in the state takes place in the name of the king. *He is the personified power of the state.*"[1] The king is, however, limited and subject to control in the exercise of his power, and it is the main function of the constitution to define the limitations and the methods of control.

The most important change which the establishment of the constitution in Prussia produced was the admission of the people to a participation in legislation. Up to that time the expressed will of the monarch had not only been supreme as it still is, but legally unlimited and all-sufficient in the formation of the law. This ought never to be forgotten in judging the Prussian constitution. The legislative bodies are relatively recent in their origin, while a long tradition of uncontrolled legislative power remains to favor the preponderance of the monarch. The representatives of the people are not placed upon the same plane with the ruler. Even in law-making, we shall find that the chambers are not co-equal with the monarch. Let us examine then the exact constitutional rôle which the people or their representatives play in Prussia. In what respects do they exercise a control over the previously absolute power of the monarch? What governmental functions may

[1] Schulze, "*Preussisches Staatsrecht.*" Zweite Aufl., I, 158-9.

the monarch still perform independently, and to what extent must he, according to the constitution, regard the wishes of the chambers?

According to German law, as we have already seen, "the *whole* power of the state is vested in the king, his will is the will of the state. This is not, however, arbitrary and subjective, but is externally conditioned, that is to say, in the most important governmental functions he is bound by the co-operation of independent organs of which the representation of the people is the most important. The representatives of the people may not reign themselves, but through their action they may influence and direct the government in popular lines. They serve as an intermediary between ruler and ruled." . . . But "the chambers have no part in the power of the state, they exercise no co-ordinate sovereignty, no *co-imperium*. As individual members and as a whole they are *subjects* of the king. Their activity begins and ends by authority of the king, but within their sphere they are perfectly free. As respects the expression of opinion and their decisions they are independent of any royal command and have only to work for the welfare of people and state according to their convictions. On the other hand the king is bound to obtain their assent in the exercise of the most important functions of state. His will in the cases determined by the constitution becomes the full will of the state, only when it has received the ratification of the representatives of the people.[1]

The function of the chambers is a double one, which consists in the first place, in so influencing the whole policy of the government that in its important acts and measures it may observe the wishes of the nation and

[1] Schulze, *Op. cit*, I, 567-8.

remain in harmony with the general spirit of the people: in the second place the constitutional order of the state as well as the civil rights of individuals must be protected from the unlawful attacks or encroachments of the king and his ministers.[1]

In view of what has just been said a natural question arises. Are the rights of the people to participate in the government confined to such powers as are *explicitly* conferred upon the chambers by the constitution, the king retaining the right to exercise all other powers in the former absolute and uncontrolled manner, or are the constitutional rights of the chambers deducible from general principles? While this question is not of so much practical importance as it would at first sight appear, it serves excellently to illustrate the spirit of the Prussian constitutional monarchy. As might be expected the German authorities differ somewhat in their views. This difference goes back to the earlier period when most of the German States, with the notable exception of Prussia, were introducing a constitutional form of government. The Final Act of Vienna (1820) provided that in accordance with the fundamental principles of the German Confederation the whole power of the state must remain vested in the head of the state and that the sovereign could be limited through a constitution, by the co-operation of the representatives of the people only in the exercise of *certain defined rights.*[2] This principle has been recognized in a great number of the

[1] Schulze, *Op. cit.*, I, 608.

[2] This important passage reads as follows: "Da der deutsche Bund mit Ausnahme der freien Städte aus souverainen Fürsten besteht, so muss, dem hierdurch gegebenen Grundbegriffe zufolge, die gesammte Staatsgewalt in dem Oberhaupte des Staats vereinigt bleiben, und der Souverain kann durch eine landständische Verfassung nur in der Ausübung bestimmter Rechte an die Mitwirkung der Stände gebunden werden."—*Wiener Schluss-Akte, Art. LVII., bei Meyer Corpus Juris Confoed. Ger.*

existing constitutions of Germany, and Meyer[1] claims that in view of the explicit declarations to that effect in the constitutions of Bavaria, Saxony, Würtemberg, Baden, Hesse and eleven of the lesser states the presumption is always in favor of the king. "All powers remain vested in the monarch which are not expressly withdrawn, while the other organs of the state can lay claim only to those expressly granted to them." Even if this theory is not universally accepted in precisely this form[2] it sheds much light upon the traditional relations between monarch and people in Germany and illustrates the relatively disadvantageous position which the chambers occupy. Where there is doubt in regard to the exercise of a given power history appears always to side with the monarch.

Upon turning to a consideration of the actual process of law-making, in which it is the especial object of the constitution to secure the participation of the chambers, the predominating influence of the monarch becomes even more apparent. In the first place the king retains important rights of independent legislation in his ill-defined power to issue *ordinances* which may be in substance really laws. The distinction between law and ordinance was practically unrecognized before the introduction of a constitution, for all laws necessarily took the form of royal ordinances. Since the establishment of a system of popular representation all *laws* must normally receive the assent of the chambers in order to be valid. In general, the monarch, as chief executive, may constitutionally issue independently only such administrative

[1] "*Deutsches Staatsrecht*," 205.

[2] Schulze ("*Deutsches Staatsrecht*," I. 477) objects to this conclusion and maintains that the attempt to form a complete catalogue of the rights of the representatives of the people is as delusive as the effort to form a complete list of those of the crown.

rules as simply bind the government officials, while all measures involving an alteration of the law of the land must receive the assent of the chambers. But in Prussia the variety of functions performed by the state is so great and the technical information demanded is so considerable that there is a well founded inclination upon the part of the representatives of the people modestly to refer the decision upon less important points of legislation to the king and his ministers. The field is altogether too considerable for a popular assembly, consisting even of the best qualified members, to be able in every case to formulate a law complete in its details and yet adapted to the exigencies of the occasion. Obviously those called upon to conduct the administration learn better than any one else the rules according to which it is most expedient to act. The laws which regulate the action of the ministers must, while insuring the rights and liberties of the subject, hamper as little as may be the administration in the accomplishment of its very comprehensive ends. The representatives of the people may and do content themselves with a general determination of the provisions of legislative measures, leaving the details in the more competent hands of king and ministers.[1] When we add to this delegated power of amplifying and elaborating the laws passed with the concurrence of the chambers, the infinite variety of important and wide-reaching administrative regulations which are issued by the monarch in his capacity of chief executive; when we consider the right of the king to enact provisional laws (Art. 63) and to dissolve the lower house (Art. 51) it is clear that the monarch and his ministers have opportunities for encroachments upon the rights of the

[1] Cf. the writer's pamphlet, "The German Bundesrath," Publications of the University of Pennsylvania, Phila., 1891.

chambers which are at once difficult to prove and impossible to prevent or punish.

The introduction of bills is not confined to the king and his ministers, but it is generally left to them, both from habit and from a want of confidence on the part of the chambers themselves.[1] This tendency is emphasized by the constitution, which allows the access of the ministers to the chambers and gives them a right to be heard at any time, thus enabling them to defend the bills introduced by them and to declare the attitude of the king and his advisers toward proposed legislation.

Although the chambers enjoy with the king the right of submitting bills, the king alone can make a bill a law. After a bill has received the approval of both houses it is passed on to the president of the ministry, who submits it to the king. "*In the acceptance or rejection by the king lies the really decisive act. Only the approval of the king converts a bill into a law.*"[2] This amounts to vesting in the king the power of absolute veto, but it is really more than that. "It does not correspond with the theory of German constitutional law to speak of the various factors of legislation, still less to designate the *positive* law creating power of the king as simply a *negative* veto. The king is not only one of the factors in legislation, *he is the law-giver himself.*"[3]

The publication of the law is the final step in legislation and until this takes place in the official organ (*Gesetzblatt*) the king is at liberty to withdraw his sanction.

In spite of the unusual opportunities and consequent temptations which, as we have seen, are afforded to the

[1] Westerkamp notes and deplores this reluctance of the chambers to take the initiative. "*Ueber die Reichsverfassung*," 127-8.
[2] Schulze, "*Preussisches Staatsrecht*," II., 21.
[3] *Ibid.*, p. 22.

king and his ministers to encroach upon the rights of the chambers, no adequate means of defence is provided against such unconstitutional action. There is no way of enforcing ministerial responsibility in Prussia, nor can the courts, as in this country, exercise a check upon the other factors in the government when they exceed their legitimate powers. While the constitution declares in general terms that the ministers shall be responsible to the chambers for their action these vague provisions have never been elaborated so as to render the forms of impeachment and trial nor the nature of the punishment sufficiently definite as to permit of actual application. The importance of this matter is realized by Prussian statesmen, and several unsuccessful efforts have been made to effect the necessary legislation which already exists in other German states. "Consequently, the anomaly continues to exist in Prussia of ministerial responsibility solemnly enunciated in the constitution, the character of the responsibility, the accuser and the court specified and at the same time a complete lack of any legal means by which the representatives of the people can protect even the constitution itself against the most flagrant violations and the most dangerous attacks."[1]

The courts, as has already been said, do not serve as a check upon unconstitutional legislation, as they do in the United States. The constitution expressly provides that "laws and ordinances shall be binding when published in the form prescribed by law. The examination of the validity of properly promulgated royal ordinances shall not be within the competence of the government authorities [including the courts,] but of the chambers solely." (Art. 106.) While this appeals

[1] Schulze, "*Preussisches Staatsrecht*," II., 694 and note.

naturally to a citizen of the United States as an anomalous condition, it ought not to be forgotten that our system is, from one point of view, not less anomalous than that of Prussia. Our courts possess what would in Germany or France be regarded as a power of legistion, in flagrant violation of the principle, so widely accepted among us, of the separation of powers. This attractive subject is susceptible of a much more thorough consideration than it has so far received.

In conclusion it will be observed that in many points the state law of Prussia has been greatly modified, or at least superseded by Federal legislation. The establishment of the strong union in 1866 and its extension in 1870–71 has produced great changes in the constitutions and laws of the individual states. Great fields of legislation have been occupied by the Federal power, and much has already been done to unify the laws of Germany.

An extended bibliography would be superfluous, as the student wishing to make a careful study of the Prussian constitutional law will naturally turn to the German treatises, where ample information in regard to the authorities is given.

I am under special obligation to Schulze's excellent "*Preussisches Staatsrecht*" (Zweite Auflage, 2 Bde., Leipzig, 1888), and von Rönne's great work "*Das Staatsrecht der Preussischen Monarchie*" (Vierte Auflage, 4 Bde., Leipzig, 1881–84). The most useful of the works upon the subject for the American student is probably Dr. Adolf Arndt's "*Die Verfassungs-Urkunde für den Preussischen Staat nebst Ergänzungs- und Ausführungs-Gesetzen, mit Einleitung, Kommentar und Sachregister.*" (Zweite, stark vermehrte und verbesserte

Auflage, Berlin, 1889.) This contains a vast amount of useful elucidation in the form of notes appended to the text of the instrument itself, as well as the text of the numerous laws supplementing the constitution and without which that instrument is scarcely intelligible. Von Sybel in his great work upon the "Founding of the German Empire," sheds much light upon the constitutional tendencies in Prussia after the granting of the constitution.

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THE CONSTITUTION OF PRUSSIA

OF THE THIRTY-FIRST OF JANUARY, 1850.

We, Frederick William, by grace of God,[1] King of Prussia, etc., hereby declare and make known that, whereas the constitution of the Prussian State, promulgated by us on the fifth of December, 1848, subject to revision by the ordinary process of legislation, and accepted[2] by both chambers of our kingdom, has been submitted to the prescribed revision, we have finally established the provisions of that constitution in agreement with both chambers.

We, therefore, promulgate the same as a fundamental law[3] of the state, as follows:

[1] The political powers of the king of Prussia are not delegated to him by the nation. He possesses them in his own right. "By the grace of God" indicates a theory opposed to that, for example, of the Belgian constitution, or of the French constitution of 1791, which regards the sovereignty as vested fundamentally in the nation.

[2] The ratification by the chambers of the draft submitted by the king was, of course, legally unnecessary, and is mentioned in the preamble simply from political motives in order to give the benefit of popular approval to a really "octroyed" constitution. The constitution, as issued by the king in 1848, was the decree of an absolute monarch, the simple declaration of whose will was law. (See Introduction, pp. 13 and 15.)

[3] The conception of the Prussian constitution as the "fundamental law of the state" is that no act of the state may run counter to its provisions. But when the constitution makes no provision for the exercise of the power of the state, as very frequently happens, former laws remain in force. The constitution does not therefore enumerate all the powers of the state, as does ours, nor does it furnish the basis of the royal prerogative. As Arndt expresses it, "It was not the constitution which created the royal power in Prussia, but the royal power which created the constitution." (*Die Verfassungs-Urkunde*. Zweite Aufl., p. 46.)

TITLE I.

THE TERRITORY OF THE STATE.

ARTICLE 1. All parts of the monarchy in its present extent form the territory of the Prussian State.

ART. 2. The boundaries of this territory can only be altered by law.

TITLE II.

THE RIGHTS OF PRUSSIANS.[1]

ART. 3. The constitution and the law[2] determine under what conditions the quality and rights of a Prussian citizen may be acquired, exercised or forfeited.

ART. 4. All Prussians shall be equal before the law. Class privileges shall not be permitted. Public offices, subject to the conditions imposed by law, shall be uniformly open to all who are competent to hold them.

ART. 5. Personal freedom is guaranteed. The forms and conditions under which any limitation thereof, especially arrest, shall be permissible, shall be determined by law.

[1] About forty of the one hundred and eleven permanent articles of the Prussian constitution relate explicitly to the rights of the Prussian citizen. The attempts to formulate the fundamental and inalienable rights of the individual originated undoubtedly in a desire to limit the arbitrary power of the monarch. Beginning in England, these reached their extreme phase in the Declaration of the Rights of Man of 1789, and in the succeeding republican constitutions drawn up from time to time in France. These provisions suggest the "Bills of Rights" of our earliest State constitutions and the first ten amendments to the Federal constitution. The violent jealousy of government, which has formed from the first one of the most characteristic traits of our political make-up, led us to seize eagerly upon this expedient, and turn it first against the apprehended encroachments of the State governments upon the individual and then apply it in the case of the Federal government as a protection to the rights both of State and individual.

[2] In this, as in a number of other instances, the newer Federal law supplants the provisions of the State constitutions. Although citizenship in the German empire is dependent on and inseparable from citizenship in an individual state, this matter is carefully regulated by the Federal law of June 1, 1870. (The text of this law is reprinted by Arndt. *Op. cit.*, p. 181.)

ART. 6. The domicile shall be inviolable. Intrusion and search therein, as well as the seizing of letters and papers, shall be allowed only in the manner and in the cases prescribed by law.

ART. 7. No one shall be deprived of his lawful judge. Exceptional tribunals and extraordinary commissions shall not be permitted.

ART. 8. Punishments shall not be prescribed or inflicted except according to law.

ART. 9. Property is inviolable. It shall only be taken or interfered with from considerations of public weal, and then only in a manner to be prescribed by law, and in return for a compensation to be previously determined. Even in urgent cases a preliminary valuation and compensation shall be made.

ART. 10. Civil death and confiscation of property,[1] as punishment, shall not be permitted.

ART. 11. Freedom of emigration can only be limited by the state, with view to military service. Migration fees shall not be levied.

ART. 12. Freedom of religious confession, of association in religious societies (Art. 30 and 31), and of the common exercise of religion in private and public, is guaranteed. The enjoyment of civil and political rights shall not be dependent upon religious belief. But the exercise of religious liberty shall not be permitted to interfere with the civil or political duties of the citizen.

ART. 13. Religious and ecclesiastical associations,

[1] Civil death is the exclusion from the fundamental rights of having births, marriages and deaths the subject of legal record. For example, the Huguenots were deprived of their civil status by the revocation of the Edict of Nantes. Their marriages were, from a legal standpoint, simple concubinage, and their children illegitimate. Nor could they bequeath or inherit property. Confiscation of individual articles is not excluded by this clause. Moreover, the Federal law provides for confiscation as a punishment in case of high treason and the neglect of the duty of military service. (S. G. B., §§ 93 and 140.)

which have no corporate rights, can only acquire those rights by special laws.

ART. 14. The Christian religion shall be taken as the basis of those state institutions which are connected with the exercise of religion without prejudice to the religious liberty guaranteed by Article 12.

ART. 15, 16 and 18.[1] [Repealed June 18, 1875.]

ART. 17. A special law shall be enacted relating to church patronage and to the conditions on which it may be abolished.

ART. 19. Civil marriage[2] shall be introduced in accordance with a special law which shall also regulate the keeping of a civil register.

ART. 20.[3] Science and its teachings shall be free.[4]

[1] The articles in their original form provided that the Protestant and Roman Catholic churches, as well as all other religious societies, should regulate their own affairs in an independent manner. Moreover, intercourse between religious societies and their superiors was to be unobstructed, and the publication of church ordinances subjected only to such restrictions as were imposed upon other publications. The abrogation of these articles was the outcome of the long conflict between Church and state (*Kulturkampf*) in Prussia which followed the Council of the Vatican of 1870. The ministry found themselves greatly hampered in their struggle with the church authorities by the provisions of the constitution, which their opponents urged were being violated when any stringent measures were taken.

[2] The question exactly what gives legal validity to the performance of the marriage ceremony has naturally been one of the utmost importance in countries where the claims of the Catholic Church and of the state conflicted. Marriage is one of the sacraments of the Roman Church and the refusal of its ministers to perform or recognize the marriage of individuals obnoxious to them has been a fruitful source of discord between them and the civil authorities. The law here provided for was not passed until 1874, and was almost immediately superseded by the Federal law of February 6, 1875, which also regulated the maintenance of the civil register or public record of births, marriages and deaths.

[3] Articles 20–26 are regarded by the best authorities as practically suspended by Article 112, which provides that educational matters shall continue to be regulated by the existing Prussian laws until the general legislation foreseen by Article 26 be carried out. No such general law has been passed however. (See Löning "*Verwaltungsrecht*," 738 and 752.)

[4] To realize the significance of this article, one should consult the decree of the German Diet (September 20, 1819), which was, of course, binding for Prussia. A

ART. 21. The education of youth shall be adequately provided for by public schools. Parents and their representatives shall not leave their children or wards without that education prescribed in the public elementary schools (*Volksschulen*).

ART. 22. Every one shall be at liberty to give instruction, and establish institutions of learning, provided he shall have given proof, to the proper state authorities, of his moral, scientific and technical fitness.

ART. 23. All public and private educational institutions shall be under the supervision of authorities appointed by the state. Teachers in the public schools shall have the rights and duties of public officials.

ART. 24. In the establishment of public elementary schools, confessional differences shall be considered as far as possible.[1]

Religious instruction in the elementary schools shall be superintended by the religious organizations concerned.

The charge of the external affairs of the elementary schools shall belong to the community (*Gemeinde*). With the statutory co-operation of the community in the manner and to the extent determined by law, the State shall appoint the teachers in the public elementary schools from the number of those qualified.

ART. 25. The means for establishing, maintaining and enlarging the public elementary schools shall be

special official was designated for each university, who, in view of the much feared revolutionary plots, was "carefully to observe the spirit in which the university professors lectured," and to "exercise a salutary influence upon instruction, with a view to determining the future attitude of the youthful student." (Provisorischer Beschluss über die in Ansehung der Universitäten zu ergriefenden Maasregeln; apud v. Meyer. *Corpus Juris Confoed. Ger.*)

[1] Gneist's view is the generally accepted one that the legal elementary school in Prussia is one in which religious instruction *must be*, and general instruction *must not be* sectarian. (See Arndt, *Op. cit.*, 75.)

provided by the communities, which shall, however, be assisted by the State in proven cases of pecuniary inability on the part of the community. The obligations of third parties, based on special legal titles, shall not be impaired.

The State shall accordingly guarantee to teachers in the elementary schools a steady income suitable to local circumstances.

In public elementary schools education shall be imparted free of charge.

ART. 26. A special law shall regulate all matters of education.

ART. 27. Every Prussian shall be entitled to express his opinion freely by word, writing, print, or pictorial representation.

Censorship of the press may not be introduced; and no other restriction on the freedom of the press shall be imposed except by law.[1]

ART. 28. Offences committed by word, writing, print, or pictorial representation shall be punished in accordance with the general penal code.[2]

ART. 29.[3] All Prussians shall be entitled to meet in

[1] Censorship differs from other restrictions in requiring the *previous* submission of contemplated publications to stated government officials whose sanction is required before the publication can legally appear. The results of this system have been uniformally evil and unpopular. Legislation in regard to the press is by the Imperial constitution vested in the Federal government, which May 7, 1874, issued a press law.

[2] Superseded by the Federal law just mentioned (note to Art. 27), which, in the case of periodical publications, regards the "responsible editor" as punishable if the law is violated, unless special circumstances exclude the presumption of his guilt.

[3] Articles 27, 29 and 30, which regulate respectively the freedom of the press, the right of peaceful assembling and of association, are all modified by the Federal law of September 21, 1878, which prohibits all publications, meetings and associations "in which social-democratic, socialistic or communistic efforts directed toward the destruction of the existing political or social order are apparent."

closed rooms, peacefully and unarmed, without previous permission from the authorities.

But this provision does not apply to open-air meetings, which shall be subject to whatever restrictions the law may prescribe even with respect to previous permission from the authorities.

ART. 30. All Prussians shall have the right to form associations for such purposes as do not contravene the penal laws.

The law shall regulate with special regard to insuring the public security, the exercise of the right guaranteed by this and the preceding article (29).

Political associations may be subjected by law[1] to restrictions and temporary prohibitions.

ART. 31. The law shall determine the conditions on which corporate rights may be granted or refused.

ART. 32. The right of petition shall belong to all Prussians. Petitions under a collective name shall be permitted only to public authorities and corporations.

ART. 33. The privacy of the mails shall be inviolable. The necessary restrictions of this right, in cases of war and of criminal investigation, shall be determined by law.[2]

ART. 34. All Prussians are bound to military service. The extent and character of this duty shall be determined by law.[3]

[1] "Law" is here contrasted with "*ordinance*," as in other instances, *e. g.*, Article 27. (See Introduction, p 20.)

[2] This matter is now naturally regulated by the Federal law. The opening of letters has often been resorted to by tyrannical governments to incriminate individuals or even to gratify the idle curiosity of the ruler, as under Louis XV. and Napoleon.

[3] Superseded by Article 57 of the Imperial constitution which reads, "Every German is bound to military service and can not be represented by a substitute."

ART. 35. The army shall include all divisions of the standing army and the militia (*Landwehr*). In the event of war, the king can call out the reserve militia (*Landsturm*) in accordance with the law.

ART. 36. The military power can only be employed for the suppression of internal troubles, and the execution of the laws, in the cases and manner specified by statute, and on the requisition of the civil authorities. In the latter respect exceptions may be made by law.

ART. 37. The court-martial of the army shall be restricted to penal matters, and shall be regulated by law. Provisions with regard to military discipline shall remain the subject of special ordinances.

ART. 38. The military forces shall not deliberate whether in active service or not; nor shall they otherwise assemble than when commanded to do so. Thus assemblies and meetings of the militia (*Landwehr*) for the purpose of discussing military arrangements, commands and ordinances, are forbidden, even when they are not in active service.

ART. 39. The provisions of Arts. 5, 6, 29, 30 and 32 shall apply to the army only in so far as they do not conflict with military laws and rules of discipline.

Although the Imperial constitution (Art. 61) adopted out and out the Prussian military legislation, this has since been largely supplanted by Federal laws. These provide that the period of military duty shall extend from the seventeenth to the close of the forty-second year. The law requires twelve years of service in the army from the twentieth year as follows: Three years with the standard, four years in the reserve and five in the militia (*Landwehr*). All subject to military duty between the ages of seventeen and forty-two who are *not* in the army constitute the *Landsturm*, a force which the Emperor may call out in case of invasion. The best account of the military law is to be found in "*Die Militärgesetze des Deutschen Reiches mit Erläuterungen*" (second edition, Berlin, 1888), issued under the auspices of the Imperial ministry of war. Laband treats this subject at great length in the second edition of his Constitutional Law. (II, pp. 497–838.) Cf. also works of Schulze, v. Rönne, Bornhak, etc.

ART. 40.[1] [As amended by the law of June 5, 1852.]

Art. 2. The establishment of feudal tenures is forbidden.

The feudal bond (*Lehnsverband*) still existing with respect to surviving fiefs shall be dissolved by law.

ART. 41. [As amended by the law of June 5, 1852.]

Art. 3. The provisions of Art. 2 do not apply to crown fiefs or to fiefs situated in other countries.

ART. 42.[2] [As amended April 14, 1856.]

In accordance with special laws already passed the following are abolished without compensation:

1. The right to exercise or delegate judicial power, connected with the possession of certain lands, together with the fees and exemptions accruing from this right.

2. The obligations arising from manorial or patriarchial jurisdiction, from serfage, and from former tax and industrial organization. (*Steuer-und Gewerbe-Verfassung.*)

With these rights are also abolished the counter-services and burdens devolving upon those enjoying these rights.

[1] Articles 40 and 41 of the original text were abolished by the law of June 6, 1852, and Articles 2 and 3 of that law were substituted for them. This was to secure the maintenance of entails which had been abolished by the articles as they originally stood.

[2] This article is given as amended by the law April 14, 1856, with the purpose of maintaining certain feudal arrangements which seemed to the reactionary spirits of the period to have been too rudely destroyed. For example, the article as it originally stood *guaranteed* the right of division of estates and of the commutation of feudal dues. It has not been deemed necessary, in view of the difficulty of finding intelligible English equivalents for the technical terms of the Prussian feudal law, to reproduce the original articles.

TITLE III.

THE KING.[1]

ART. 43. The person of the king shall be inviolable.[2]

ART. 44. The king's ministers shall be responsible. All official acts of the king shall require for their validity the counter-signature of a minister, who shall thereby assume responsibility for them.[3]

[1] (See Introduction, pp. 16 *et seq.*)

[2] The king can do no wrong, according to German as well as English law. He is not legally responsible for his conduct, for there is no power *above* him which can call him to account. Even if he violates the constitution, "he is responsible to God alone and to his conscience, for the king has no judge except history." (v. Rönne, *Op. cit.*, I, 153.)

[3] The responsibility is as yet *political* only. The ministers are not subject to criminal prosecution from their governmental acts, owing to the fact that no law has been passed defining the offenses or penalties. (See Art. 61.) The position of the ministers is thus defined in a declaratory rescript issued by the German Emperor and King of Prussia in 1882: "The right of the king to conduct the government and policy of Prussia according to his own direction is limited by the constitution (of January 31, 1850), but not abolished. The government acts (documentary) of the king require the counter-signature of a minister, and as was also the case before the constitution was issued, have to be represented by the king's ministers; but they nevertheless remain government acts of the king, from whose decisions they result, and who thereby constitutionally expresses his will and pleasure. It is therefore not admissible, and leads to obscuration of the constitutional rights of the king, when their exercise is so spoken of as if they emanated from the ministers for the time being responsible for them, and not from the king himself. The constitution of Prussia is the expression of the monarchial tradition of this country, whose development is based on the living and actual relations of the king to the people. These relations, moreover, do not admit of being transferred to the ministers appointed by the king, for they attach to the person of the king. Their preservation, too, is a political necessity for Prussia. It is, therefore, my will that both in Prussia and in the legislative bodies of the empire (*Reich*) there may be no doubt left as to my own constitutional right and that of my successors personally to conduct the policy of my government; and that the theory shall always be rejected that the (doctrine of the) inviolability of the person of the king, which has always existed in Prussia, and is enunciated by Article 43 of the constitution, or the necessity of a responsible counter-signature of my government acts, deprives them of the character of royal and independent decisions. It is the duty of my ministers to support my constitutional rights by protecting them from doubt and obscuration, and I expect the same from all State

ART. 45. The executive power shall belong to the king alone. He shall appoint and dismiss the ministers.[1] He shall order the promulgation of the laws and issue the necessary ordinances for their execution.

ART. 46. The king shall be commander-in-chief of the army.

ART. 47. The king shall fill all posts in the army, as well as in other branches of the public service, in so far as it is not otherwise ordained by law.[2]

ART. 48. The king shall have power to declare war and make peace,[3] and to conclude other treaties with foreign governments. The latter require for their validity the assent of the chambers in so far as they are commercial treaties, or impose burdens on the State, or obligations on the individual subjects.

officials (*Beamten*) who have taken the official oath to me. I am far from wishing to impair the freedom of elections, but in the case of those officials who are intrusted with the execution of my government acts, and may, therefore, in conforming with the disciplinary law forfeit their situations, the duty solemnly undertaken by their oath of service also applies to the representation by them of the policy of my government during election times. The faithful performance of this duty I shall thankfully acknowledge, and I expect from all officials that, in view of their oath of allegiance, they will refrain from all agitation against my government even during elections." Berlin, January 4, 1882. Wilhelm. von Bismarck. To the Ministry of State.

[1] The monarch is not, for example, bound by the wishes of the majority of the diet in choosing his ministers.

[2] No law depriving the king of this power of appointing government officials has ever been passed. The officials are entirely and solely dependent upon the monarch, the supreme director of the administrative system, for their rank and salary. Bismarck once illustrated this in the case of the Empire in an address before the Reichstag as follows: If you stop my pay (*i. e.*, make no appropriation) I will simply sue in the courts, and the Empire will be forced, so long as I remain Imperial Chancellor, to continue my salary. (*Sten. Bericht*, December 1, 1885, cited by Arndt, 99.)

[3] Since the establishment of the German Federation, the King of Prussia no longer has the power to declare war or conclude peace, nor can treaties (except extradition treaties) be concluded by the separate states, all these functions being assumed by the Empire. (See Art. II of Imperial Constitution.)

ART. 49. The king shall have power to pardon, and to mitigate punishment.

But in favor of a minister condemned for his official acts, this right can only be exercised on the motion of that chamber whence his impeachment emanated.

Only in virtue of a special law can the king suppress inquiries already instituted.

ART. 50. The king may confer orders and other distinctions, so far as they do not carry privileges with them.

He shall exercise the right of coinage in accordance with the law.[1]

ART. 51. The king shall convoke the chambers, and close their sessions. He may dissolve the two chambers together or either one.[2] In such a case, however, the electors shall be assembled within a period of sixty days, and the chambers summoned within a period of ninety days respectively after the dissolution.

ART. 52. The king shall have power to adjourn the chambers. But without their assent this adjournment may not exceed the space of thirty days, nor be repeated during the same session.

ART. 53. The crown is, in accordance with the laws of the royal family,[3] hereditary in the male line of

[1] Article 4 of the Imperial Constitution assumes for the Empire the legislation in regard to coinage.

[2] The Upper Chamber or House of Lords in Prussia is, in virtue of the law of July 5, 1853 (see note to Art. 65-9), no longer an elective body, consequently the provisions for dissolution apply only to the House of Representatives. The upper house must, however, according to the constitution (Art. 77), be prorogued in case the lower house is dissolved. The number of possible dissolutions is unlimited. There seems to be no constitutional provision which would prevent the king from dissolving a newly elected chamber before it came together.

[3] The laws (*Hausgesetzen*) here referred to were rules established by the members or branches of the family reigning over the various Prussian possessions at a time when the idea of the state as distinguished from the private property of the

that house following the law of primogeniture and agnatic[1] succession.

ART. 54. The king shall attain his majority on completing his eighteenth year.[2]

In presence of the united chambers he shall take the oath to observe the constitution of the monarchy steadfastly and inviolably, and to rule in accordance with it and the laws.

ART. 55. Without the consent of both chambers the king cannot also be ruler of foreign realms.

ART. 56. If the king is a minor, or is otherwise permanently prevented from ruling himself, the regency shall be undertaken by that agnate (Art. 53), who has attained his majority and stands next in succession to the crown. He shall immediately convoke the chambers, which, in united session, shall decide as to the necessity of the regency.

ART. 57. If there be no agnate of age, and if no legal provision has previously been made for such a contingency, the Ministry of State shall convoke the chambers, which shall then elect a regent in joint session.

prince was first making its appearance. These laws, of which the earliest was the famous will of Albrecht Achilles (1473), established three great principles: (1) The unconditional preference to be given to male heirs; (2) the inalienability, and (3) the indivisibility of the princely possessions. The last was the most difficult to carry out, as it had been customary to divide the lands among the heirs like personal effects. An example of the result of this custom can be seen to-day in the sporadic possessions of the Thuringian princes. How the comparatively insignificant Electorate of Brandenburg, which came into the possession of the House of Hohenzollern in 1415, has gradually become the kingdom of Prussia, over which William II. rules, is best seen from the excellent series of maps in Droysen's "*Historischer Handatlas*," pp. 52–53.

[1] Latin, *agnatus*, descended from the father's side, as distinguished from *cognatus*. No woman can ascend the Prussian throne so long as any male descendant of the founder of the family, capable of occupying the throne, survives. In this the German law differs from that of England and Spain for example.

[2] This corresponds to the older Prussian law, and even to the Golden Bull of 1346.

And until the assumption of the regency by him, the Ministry of State shall conduct the government.

ART. 58. The regent shall exercise the powers vested in the king in the name of the latter. After the establishment of the regency, he shall take the oath before the chambers in joint session to observe the constitution of the monarchy steadfastly and inviolably, and to rule in accordance with it and the laws.

Until this oath is taken, the whole Ministry of State for the time being shall remain responsible for all acts of the government.

ART. 59. The annuity drawn from the income of the forests and domains and set apart by the law of January 17, 1820, shall remain attached to the entailed fund of the crown.[1]

TITLE IV.

THE MINISTERS.[2]

ART. 60. The ministers, as well as the State officials appointed to represent them, shall have access to each chamber, and must at all times be heard upon their own request.[3]

[1] The fund here mentioned resembles essentially the civil list of England. It has been several times increased by law, and now amounts to 15,719,296 marks, or toward $4,000,000. In addition to this the king and members of the royal family have large private possessions and private sources of incomes which do not come within the purview of the public law.

[2] There are nine ministerial departments in Prussia, viz: (1) Foreign Affairs, (2) War and the Navy, (3) Justice, (4) Finances, (5) the Interior (these five were established in 1810), (6) Affairs of Church, Education and Public Health (*Medizinal-angelegenheiten*), (7) Trade and Industry, (8) Agriculture, Domains and Forests, (9) Public Works. The ministers are formed into a regularly constituted council for the consideration of the general administrative policy and of other important matters. This ministerial council is recognized by the constitution in Articles 57, 58, 63 and 111. The monarch and the ministers constitute the "government" (*Regierung*), and form the guiding power in the administration of the State.

[3] This provision illustrates the relation between the government and the representative bodies. When a representative of the ministry appears in one of the

Each chamber can demand the presence of the ministers.[1]

The ministers shall be entitled to vote in one or other of the chambers only when members of it.

ART. 61. On the resolution of one chamber the ministers may be impeached for the crime of violating the constitution, for bribery and for treason. The decision of such cases shall lie with the supreme tribunal of the monarchy sitting as one body. As long as two Supreme Courts exist, they shall be united for the above purpose.

Further details as to matters of responsibility, procedure and punishment, are hereby reserved for a special law.[2]

TITLE V.

THE CHAMBERS.

ART. 62. The legislative power shall be exercised in common by the king and the two chambers.

Every law shall require the assent of the king and of the two chambers.[3]

Money bills and the budgets shall first be laid before the second chamber; the budgets shall either be accepted or rejected as a whole by the first chamber.

ART. 63. In the event only of its being urgently necessary to maintain public security, or deal with an

chambers and asks to be heard, even if the debate has been formally closed, it must be reopened. The monarch and ministry deny the right of the speaker of either of the chambers to call representatives of the government to order for violent language, and in no case can they be deprived of the floor.

[1] When called before the chambers the ministers are not compelled, except in definite cases (as for example, that provided for in Art. 81), to give the required information.

[2] Until the passage of this law ministerial responsibility continues to be a dead letter in Prussia. (See Introduction, pp. 22-3 and Note to Art 44.)

[3] On the relation of the king to the chambers in legislation, see Introduction, pp. 17 *et seq.*

unusual state of distress when the chambers are not in session, ordinances, which do not contravene the constitution, may be issued with the force of the law, on the responsibility of the whole ministry. But these must be immediately laid before the chambers for approval at their next meeting.[1]

ART. 64. The king, as well as each chamber, shall have the right of proposing laws. Bills that have been rejected by one of the chambers, or by the king, cannot be re-introduced during the same session.

ARTS. 65–69. [As amended May 7, 1853.][2] The first chamber shall be formed by royal ordinance[3] (*Anord-*

[1] The refusal of the chambers to ratify such provisional laws does not invalidate them. They remain in force until the king, as he is constitutionally bound to do, revokes them.

[2] The original articles provided for an upper house consisting of certain members by right of birth, others appointed by the king for life, and lastly one hundred and twenty elective members chosen by the richer classes and the cities. These latter were to hold their seats six years.

An account of the composition of the present upper house will be found in the following note.

[3] This delegation to the king of the power to constitute the upper house as he might choose without even consulting the representatives of the people is a striking example of the reaction during the latter years of the reign of Frederick William IV. The chief provisions of the ordinance, which the king issued October 12, 1854, regulating the membership of the upper house, are as follows:

The House of Lords consists of hereditary members and of members appointed for life by the king. The first includes the Princes of the Royal Family, the members of the former Holy Roman Empire holding possessions within the limits of the Prussian State who were recognized by the Act of Confederation (*Bundesakt*) of 1815, those lords and gentlemen summoned to the United Diet in 1847, as well as any others whom the king may from time to time designate.

The king is to choose the life members from (*a*) the nominees of certain specified corporations, and (*b*) such persons as excite especial royal confidence. Class (*a*) are nominated by cathedral chapters, provincial organizations of the nobility and unions of possessors of great landed estates, by the universities and by such cities as the king may designate.

Although the king is quite free to accept or reject these nominations and may be said in accordance with the provisions of the constitution really to choose them the system of nominations as provided for in the ordinance certainly violates

nung) which can only be altered by a law to be issued with the approval of the chambers.

The first chamber shall be composed of members appointed by the king, with the right of hereditary transmission, or only for life.

ART. 69. [As amended April 30, 1851; May 17, 1867, and June 23, 1876.] The second chamber shall consist of four hundred and thirty-three members.[1]

The electoral districts shall be determined by law. They shall consist of one or more circles (*Kreisen*), or of one or more of the larger towns.[2]

ART. 70. Every Prussian who has completed his twenty-fifth year,[3] and is qualified to take part in the elections of the commune where he is domiciled, is entitled to act as a primary voter (*Urwähler*).

One entitled to take part in the election of different

the constitution. The members selected are not life members, because they cease to be members of the House of Lords so soon as they lose the status in virtue of which they were nominated. If a professor representing a university is called to another position, if a magistrate representing a city loses his office, if one nominated by the landed gentry sells his property his seat in the chamber is looked upon as vacated. The king in drawing up the ordinance failed to observe the restrictions imposed by Articles 65–68 (in their amended form), for these only permit hereditary and life members in the upper house. Cf. Schulze, 2te aufl. 1, 584 note.

Finally it is noticeable that the king is in no way limited in respect to the number of members he may call to the upper house. (The text of the ordinance issued by the king October 12, 1854, establishing the composition of the House of Lords, is given by Arndt, 216 *et seq.*, as well as a list of the forty-four towns, which have been designated by the king to make nominations.)

[1] The original number of 350 members was in 1851 increased by two for the annexed Province of Hohenzollern, in 1867 by eighty for the newly annexed territory of Hanover, Nassau, etc., and finally by one in 1876 for Lauenburg.

[2] The law of June 27, 1860, with various later modifications, establishes the electoral districts (text in Arndt, 255). The districts, as a rule, return two members, but occasionally three, and frequently but one. The legislation of 1884–85 redistricted the Provinces of Hanover and Hesse-Nassau, where (with two exceptions), each district elects a single deputy.

[3] The ordinance of 1849 says twenty-four years. (See next note.)

communes, can only exercise his right as primary voter in one commune.

ART. 71. For every 250 souls of the population, one elector (*Wahlmann*) shall be chosen. The primary voters shall be divided into three classes in proportion to the amount of direct taxes they pay, and in such a manner as that each class shall represent a third of the sum total of the taxes paid by the primary voters.

This sum total shall be reckoned:

(*a*) By communes, in case the commune forms of itself a primary electoral district.

(*b*) By districts (*Bezirke*), in case the primary electoral district consists of several communes.

The first class shall consist of those primary voters, highest in the scale of taxation, who, taken together, pay a third of the total.

The second class shall consist of those primary voters, next highest in the scale, whose taxes form a second third of the whole.

The third class shall be made up of the remaining taxpayers (lowest in the scale) who contribute the other third of the whole.

Each class shall vote apart, and shall choose each a third of the electors.

These classes may be divided into several voting sections, none of which, however, must include more than 500 primary voters.

The electors shall be chosen by each class from the number of the primary voters in their district, without regard to the classes.

ART. 72. The deputies shall be chosen by the electors.

Further details relating to the elections shall be determined by an electoral law,[1] which shall also make the

[1] Article 115 provides that until this proposed law is passed the ordinance of May 5, 1849 (see Introduction, p. 13), regulating the election of members to the

necessary provision for those cities where flour and meat duties are levied instead of direct taxes.

ART. 73. [As amended May 22, 1888.] The legislative period of the second chamber shall be five years.[1]

ART. 74. [As amended March 27, 1872.] Every Prussian is eligible as deputy to the second chamber who has completed his thirtieth year, who has not forfeited his civil rights in consequence of a valid judicial sentence, and who has been a Prussian subject for three years.[2]

The president and members of the supreme chamber of accounts cannot sit in either house of the diet (*Landtag*).[3]

ART. 75. After the lapse of a legislative period the chambers shall be elected anew, and the same in the event of dissolution. In both cases previous members are re-eligible.

ART. 76. [As amended May 18, 1857.] Both houses of the diet of the kingdom shall be regularly convened

lower house shall remain in force. No such general law has been passed, but the provisions of the constitution, so far as they go, are nearly identical with those of the ordinance of 1849, and the succeeding modifications of this which have from time to time been made. The text of this ordinance, with later legislation, including the law of June 29, 1893, will be found in Arndt, 225 and 321. Each primary election district must choose at least three electors, but may not be so large as to choose more than six. The number chosen by a primary district must, if possible, be divisible by three. When there is one odd elector he is chosen by the second class, if two, one is chosen by the first and one by the third class. (Ordinance of 1849, Sec. 14.) The voting is *viva voce*, both in choosing of electors and in the selection of the deputies themselves. The third class of voters contains not only those voters who pay the smallest taxes, but those who pay no tax. The electors must belong to the electoral district where they are chosen, but need not belong to the class electing them, but the deputies need *not* be residents of the district when they are elected.

[1] Originally three years.

[2] The ordinance of 1849, above referred to, establishes *one* year.

[3] This last clause was wanting in the original form.

by the king in the period from the beginning of November in each year till the middle of the following January, and otherwise as often as circumstances may require.[1]

ART. 77. The chambers shall be opened and closed by the king in person, or by a minister appointed by him for this purpose in a joint session of the chambers.

Both chambers shall be simultaneously convened, opened, adjourned and closed. If one chamber shall be dissolved, the other shall be at the same time prorogued.

ART. 78. Each chamber shall examine the credentials of its members and decide thereupon. It shall regulate its own order of business and discipline by its rule of order, and elect its president, vice-presidents and secretaries.

Members of the public service shall require no special permit (*Urlaub*) in order to enter the chamber.

If a member of the chamber shall accept a salaried office of the State, or is promoted in the service of the State to a post involving higher rank or increase of salary, he shall lose his seat and vote in the chamber, and can only recover his seat in it by re-election.

No one can be a member of both chambers.

ART. 79. The sittings of both chambers shall be public. On the motion of its president, or of ten members, each chamber may meet in private session at which the first motion taken up shall be the question of continuing the secrecy of the session.

ART. 80. [As amended May 30, 1855.] The chamber of deputies cannot take action unless there is a majority of the legal number of its members present. Each chamber shall take action by absolute majority of votes,

[1] This article originally read: "The chambers shall be regularly assembled by the king in the month of November of each year, and otherwise as often as circumstances demand."

subject to any exceptions that may be determined by the rules of order for elections.

The house of lords shall not take action unless at least sixty members of the house holding seats and voting in accordance with the provisions of the ordinance of October 12, 1854, shall be present.[1]

ART. 81. Each chamber shall have the separate right of presenting addresses to the king.

No one may in person present to the chambers, or to one of them a petition or address.[2]

Each chamber can transmit to the ministers the communications made to it, and demand information of them in regard to any grievances thus presented.

ART. 82. Each chamber shall be entitled to appoint for its own information commissions of inquiry into facts.

ART. 83. The members of both chambers are representatives of the whole people.[3] They shall vote according to their own convictions, and shall not be bound by commissions or instructions.

ART. 84. For their votes in the chamber they can never be called to account, and for the opinion they express therein they can only be called to account within the chamber itself, in virtue of the rules of order.

No member of either chamber can, without its assent, be had up for examination, or be arrested during the parliamentary session for any penal offence, unless he be taken in the act, or in the course of the following day.

[1] This article originally provided the same rules for a quorum in both of the chambers.

[2] The dangerous results of permitting outsiders to present petitions in person is no where better illustrated than by the successive invasions of the legislative and constituent assemblies during the French Revolution by the mob of Paris.

[3] In the former assemblies of estates each group of deputies had been regarded as representing exclusively their particular social caste and not the nation or province as a whole. (See introduction, p. 9.)

Assent shall alike be necessary in the case of arrest for debt.

All criminal proceedings against a member of the chamber, and all arrests for preliminary examination or civil arrest, shall be suspended during the parliamentary session on demand from the chamber concerned.

ART. 85. The members of the second chamber shall receive out of the State treasury traveling expenses and a salary to be fixed by law.[1] Renunciation thereof shall be inadmissible.

TITLE VI.

THE JUDICIAL POWER.[2]

ART. 86. The judicial power shall be exercised in the name of the king, by independent tribunals subject to no other authority than that of the law.

Judgments shall be issued and executed in the name of the king.

ART. 87. The judges shall be appointed for life by the king, or in his name.

They can only be removed or temporarily suspended from office by judicial sentence, and for reasons previously prescribed by law. Temporary suspension from office, so far as it does not occur in consequence of a law, and involuntary transfer from one position to another, or to the superannuated list, can occur only from the causes and in accordance with the forms prescribed by law, and only in virtue of a judicial sentence.

[1] By the law of July 24, 1876, the salary of members is fixed at 15 marks or about $3.57 a day. When traveling by rail the indemnification is 13 pf. per kilometre with 3 marks for expenses of starting for or leaving Berlin.

[2] Many of the provisions of this section have been rendered obsolete by the comprehensive Federal legislation, especially the statute regulating the courts of the empire. (*Gerichtsverfassungsgesetz*) of January 27, 1877, which only tolerates the regulation of the courts by state law when this is expressly permitted. (See Note to Art. 106.)

But these provisions do not apply to cases of transfer rendered necessary by changes in the organization of the courts or of their districts.

ART. 87 [added February 19, 1879]. In the formation of courts common to the territory of Prussia and to that of other Federal States, deviations from the provisions of Article 86, and of the first clause of Article 87, are permissible.

ART. 88.[1] [Abrogated April 30, 1856.]

ART. 89. The organization of the tribunals shall be determined by law.

ART. 90. To the judicial office only those shall be appointed who have qualified themselves for it as prescribed by law.

ART. 91. Courts for special classes of cases, and, in particular, tribunals for trade and industry, shall be established by statute in those places where local needs may require them.

The organization and jurisdiction of such courts, as well as their procedure and the appointment of their members, the special status of the latter, and the duration of their office, shall be determined by law.

ART. 92. In Prussia there shall be only one supreme tribunal.

ART. 93. The proceedings of the civil and criminal courts shall be public, but the public may be excluded by a publicly announced resolution of the court, when order or good morals may seem endangered (by their admittance).

In other cases publicity of proceedings can only be limited by law.

[1] This article provided that judges were to hold no other salaried public office.

ART. 94.[1] [As amended May 21, 1852.] In criminal cases the guilt of the accused shall be determined by jurymen, in so far as exceptions are not introduced by a law issued with the previous assent of the chambers. The formation of the jury-court shall be regulated by a law.

ART. 95. [As amended May 21, 1852.] By a law issued with the previous assent of the chambers, there may be established a special court, the jurisdiction whereof shall include the crimes of high treason, as well as those crimes against the internal and external security of the State, which may be assigned to it by law.

ART. 96. The jurisdiction of the courts and of the administrative authorities shall be determined by law. Conflicts of authority between the courts and the administrative authorities shall be settled by a tribunal indicated by law.[2]

ART. 97. A law shall determine the conditions on which public officials, civil and military, may be prosecuted, for wrongs committed by them in exceeding their functions. But the previous assent of superior officials shall not be required as a condition of bringing suit.[3]

[1] Articles 94 and 95, which in their original form provided for a somewhat more general application of trial by jury, are now both superseded by the Federal regulations.

[2] It can easily happen that the ordinary courts and the administrative authorities, which also exercise judicial functions, both claim the right to decide a certain case. In order to settle such disputes and establish in given instances just what belongs to the jurisdiction of the courts and what to that of the administrative organs, an impartial judge is necessary. A court for the special purpose of deciding conflicts of this kind, composed of members belonging partly to the judiciary and partly to the administration, was established by the law of August 1, 1879. (The text to be found in Arndt, 216.)

[3] What means to adopt in order to protect the individual citizen against the abuse of power on the part of the government officials, without, at the same time, interfering with and hampering the administration, is a problem which has received much attention in Prussia. The tendency in England and the United States is to protect the right of the citizen at any cost by allowing him to prosecute

TITLE VII.

PUBLIC OFFICIALS NOT BELONGING TO THE JUDICIAL CLASS.

ART. 98. The special legal status (*Rechtsverhältnisse*) of public officials, including advocates and solicitors (*Staatsanwälte*) not belonging to the judicial class shall be determined by a law which, without unduly restricting the government in the choice of its executive agents, shall secure to civil servants proper protection against arbitrary dismissal from their posts or deprivation of their pay.

TITLE VIII.

THE FINANCES.

ART. 99. All income and expenditures of the State shall be estimated in advance for every year,[1] and be incorporated in the budget.

The latter shall be annually fixed by a law.

ART. 100. Taxes and contributions to the public treasury shall be collected only in so far as they shall

offending officials like any private person accused of violating the law. In harmony with Napoleonic conceptions of the state it had been requisite in Prussia, until the constitution was introduced, to obtain the permission of the superior administrative officials before it was possible to instigate proceedings in the courts against an official accused of exceeding his power or of neglect of duty. While Article 97 abolished this system, it did not prevent an administration jealous of interference from placing almost insurmountable obstacles in the way of a citizen who attempted to sue an offending government official. The Federal legislation has in this matter been salutary, but the existing law still provides that the superior administrative court (*Oberverwaltungsgericht*) must decide, before an official can be sued, whether he has really been guilty of exceeding his official power or of neglect of duty. (See the excellent discussion of this question in Schulze, *Op. cit.*, 640 *et seq.*)

[1] This condition was first observed in the year 1866, when the budget was actually completed before the beginning of the fiscal year (1867), to which it related. It has been repeatedly violated since. From 1862 to 1865 there was no budget agreed upon, and the government was conducted without appropriations.

have been included in the budget, or authorized by special laws.[1]

ART. 101. In the matter of taxes there shall be no privileges.

Existing tax-laws shall be subjected to a revision, and all such privileges abolished.

ART. 102. State and communal officers can levy fees only when authorized by law.

ART. 103. The contracting of loans for the State treasury can only be effected in virtue of a law; and the same holds good of guarantees involving a burden to the State.

ART. 104. Any violation of the provisions of the budget shall require subsequent approval by the chambers.

The accounts relating to the budget shall be examined and audited by the supreme chamber of accounts. The general budget accounts of every year, including the tabular view of the national debt shall, with the comments of the supreme chamber of accounts, be laid before the chambers for the purpose of discharging the government of responsibility.

A special law shall regulate the establishment and functions of the supreme chamber of accounts.[2]

TITLE IX.

THE COMMUNES, CIRCUITS, DISTRICTS, AND PROVINCIAL BODIES.

ART. 105. [As amended May 24, 1853.] The representation and administration of the communes, circuits and

[1] The provisions of Articles 99 and 100, which would seem to give the chambers a very complete control over the granting of taxes, are rendered almost nugatory in this respect by the highly anomalous Article 109, which provides that all existing taxes shall continue to be raised unless altered by law. The chambers have no constitutional right to omit existing taxes from the budget. These can only be abolished by a law requiring the sanction of the king. The result is that the control of the chambers is reduced to the right to grant or refuse to grant *new* taxes or the augmentation of existing ones. (Cf. note on Article 109.)

[2] Such a law was passed March 27, 1872.

provinces of the Prussian State, shall be determined by special laws.[1]

GENERAL PROVISIONS.

ART. 106. Laws and ordinances shall be binding when published in the form prescribed by law.

The examination of the validity of properly promulgated royal ordinances shall not be within the competence of the government authorities (*Behörde*) but of the chambers solely.[2]

ART. 107. The constitution may be amended by the ordinary method of legislation, and such amendment shall merely require the usual absolute majority in each chamber on two divisions, between which there must elapse a period of at least twenty-one days.[3]

ART. 108. The members of both chambers, and State officials, shall take the oath of fealty and obedience to the king, and shall swear conscientiously to observe the constitution.

The army shall not take the oath to observe the constitution.

ART. 109. Existing taxes and dues shall continue to be raised; and all provisions of existing statute-books, single laws and ordinances, which do not contravene the

[1] This article was originally much longer, and established the general principles which were to be followed in the provincial and local organization.

[2] The "government officials" here mentioned include the *courts*. Although only ordinances are mentioned here the courts may not, as a matter of fact, consider the constitutionality of any law. This article illustrates the very different position of the courts in Prussia from that in our own country, where they may freely pronounce upon the constitutionality of laws, and thus exercise a check upon the legislative bodies. (See Introduction, p. 23.)

[3] *Any* law passed under the conditions enumerated in Article 107 is constitutional. It need not, so long as these conditions are fulfilled, be called *explicitly* an *amendment* to the constitution, no matter how radically it interferes with the provisions of that document.

present constitution, shall remain in force until altered by law.[1]

ART. 110. All administrative authorities holding appointments in virtue of existing laws shall continue their activity until the issue of organic laws affecting them.

ART. 111. In the event of war or revolution, and pressing danger to public security therefrom ensuing, Articles 5, 6, 7, 27, 28, 29, 30 and 36 of the constitution may be suspended for a certain time and in certain districts. The details shall be determined by law.

TEMPORARY PROVISIONS.

ART. 112. Until the issue of the law contemplated in Article 26, educational matters shall be governed by the laws at present in force.

ART. 113. Prior to the revision of the criminal law, a special law will deal with offences committed by word, writing, print or pictorial representation.[2]

ART. 114.[3] [Repealed April 14, 1856.]

ART. 115. Until the issue of the electoral law contemplated in Article 72, the ordinance of the thirtieth of May, 1849, touching the election of deputies to the second chamber, shall remain in force.[4]

ART. 116. The two supreme tribunals now existing

[1] The natural inference would be that this article which contradicts, and to a great extent nullifies Article 100, was meant to be simply a *temporal* provision, which should for the time being insure an income to the government until a budget should be duly drawn up. This was undoubtedly the original intent of the provision which would have then belonged under the title, "temporary provisions." It found its way, however, among the "general provisions," and appears to have been retained advisedly in that position with the intention of depriving the chambers of the right to reduce the government income without the king's consent by omitting existing taxes from the budget. (See v. Rönne, *Op. cit.*, § 121, especially pp. 658-59.)

[2] Cf. notes on Articles 27 and 28.

[3] This article provided for the provisional administration of the local police.

[4] Cf. note on Article 72.

shall be combined into one. The organization shall be prescribed by a special law.

ART. 117. The claims of State officials who received a permanent appointment before the promulgation of the constitution shall receive special consideration in the new laws regulating the civil service.

ART. 118. Should changes in the present constitution be rendered necessary by the German Federal constitution to be drawn up on the basis of the draft of twenty-sixth of May, 1849,[1] such alterations shall be decreed by the king; and the ordinances to this effect laid before the chambers, at their first meeting.

The chambers shall then decide whether the changes thus provisionally made harmonize with the Federal constitution of Germany.

ART. 119. The royal oath mentioned in Article 54, as well as the oath prescribed to be taken by both chambers and all State officials, shall be taken immediately after the legislative revision of the present constitution (Articles 62 and 108) shall have been completed.

In witness whereof we have hereunto set our signature and royal seal. Given at Charlottenburg, the thirty-first of January, 1850.

[L.S.] FRIEDRICH WILHELM.

Graf. v. Brandenburg, v. Landenberg, v. Manteuffel, v. Strotha, v. d. Heydt, v. Rabe, Simons, v. Schleinitz.

[1] The draft of a Federal constitution, here referred to, was drawn up at the instigation of Prussia and with the co-operation of Bavaria, Saxony and Hanover, after it became evident that the National Constitutional Convention at Frankfurt had failed in its efforts to reorganize Germany.

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OF THE

KINGDOM OF PRUSSIA,

TRANSLATED AND SUPPLIED WITH

AN INTRODUCTION AND NOTES

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